**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**
**CRIMINAL APPEAL NO. 98 OF 2001**
**(Old No.7885 OF 1985)**

Arun Chand S/o Govind Ram
R/o Village Khamasa, P.C. Kundeshwari,
P.S. Kashipur District Nainital.

.....Appellant

Versus

1. Dewan Chand
2. Sant Lal
both are sons of Chet Ram
3. Mangat Ram S/o Dewan Chand.
All residents of Village Khamasa, P.O. Kundeshwari, P.S. Kashipur District Nainital

.....Opposite Parties.

**Sri Nandan Arya, learned AGA for the State.**

**Dated 4.09.2007**

**HON. DHARAM VEER, J.**

1. The C.J.M., Udham Singh Nagar vide his report dated 6.08.2007 has informed that appellant Arun Chand has been died before 10 years and respondent no.1 Dewan Chand and respondent no.2 Sant Lal have been died before 5 years. Hence, the appeal against Respondent No.1 Dewan Chand and Respondent No.2 Sant Lal stand abated.

2. This appeal preferred under section 378(4) of The Code of Criminal Procedure 1973, (*hereinafter to be referred as Cr.P.C.*) is directed against the judgment and order dated 13.05.1985 passed by Additional Chief Judicial Magistrate, Kashipur in Case No.1096/84, Arun Vs. Sant Lal & others, under Section 324/323/34/506/504 of The Indian Penal Code 1860, (*hereinafter to be referred as IPC*), whereby the respondents have been acquitted by the learned ACJM, Kashipur.

3. Briefly stated facts of the case are that on 5.07.84 at 11 AM Rajkumar, son of Arun Chand/Complainant was grazing the animals towards the mountain and at that time respondent no.2 Sant Lal was ploughing the *Hal* in his field. Suddenly Sant Lal told Rajkumar that his animals were entering in his field, took away them from his field and

thereafter he started to give filthy abuses to Rajkumar. When Rajkumar asked Sant Lal not to abuse him then all the three respondents namely Dewan Chand, Sant Lal and Mangat Ram started to beat Rajkumar by kicks and fists. This incident was seen by Udha Singh and Dharam Pal, they save Rajkumar from the grip of the respondents. Thereafter, the respondents have gone from there threatening that they will kill him. Dewan Chand was armed with *Kanta* (Farsa) by which he has caused the injury to Rajkumar. After reaching the home, Rajkumar told this incident to his father then, the complainant took his son to the Police Chowki Kundeshwari and orally written the report of the above said incident i.e. Ex.Ka.1. Rajkumar was admitted to the hospital and the Medical Officer has prepared the report i.e. Ex.Ka.2. The charge was framed against Dewan Chand under Sections 324/323/34/504/506 IPC and against Sant Lal and Mangat Ram the charge was framed under Sections 323/34/504/506 IPC. The charge was explained to the respondents, who pleaded not guilty and claimed to be tried. The prosecution in order to prove its case examined PW.1 Arun Chand (Complainant), PW.2 Rajkumar, PW.3 Dharampal, PW.4 Udha Singh and PW.5 Dr. Jaiprakash Arya. The learned ACJM, Kashipur after perusing the entire evidence on record vide his judgment and order dated 13.05.1985 acquitted Respondent No.1 Dewan Chand under Section 324/323/34/504/506 IPC and Respondent No.2 Sant Lal and Respondent No.3 Mangat Ram under Sections 323/34/504/506 IPC. Feeling aggrieved against the said judgment and order, the complainant has filed the present appeal.

4. I have heard Sri Nandan Arya, learned AGA and perused the judgment and order passed by the Additional Chief Judicial Magistrate, Kashipur dated 13.05.1985.

5. This appeal has been transferred to this Court from Allahabad High Court under Section 35(2) of U.P. Reorganization Act, 2000. After transfer of the appeal the record of the lower court was summoned. In compliance of that order In-charge Officer, District Magistrate, Nainital vide his report dated 25.07.2007 has informed that the record of the Criminal Case No.1069/84 has been weeded out on 21.12.90 as per rules. Learned AGA for the State has submitted that after passing of the order dated 13.05.85 which is under challenge, now the period of 22 years has been expired. He further submitted that now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992(29)223, it was held as under:-*

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence."***

6. Even otherwise, after perusing the judgment passed by learned ACJM., Kashipur, I do not find any incorrectness, illegality or impropriety in the impugned judgment and order dated 13.05.85 passed by additional Chief Judicial Magistrate, Kashipur.

7. In view of the above, the appeal is dismissed accordingly and the judgment and order dated 13.05.85 is hereby confirmed.

**(Dharam Veer, J.)**

**4.09.2007**
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